

Virginia Department of Health Professions

GUIDELINES FOR *PRO HAC VICE* ADMISSION OF OUT-OF-STATE COUNSEL AND PRACTICE BY NON-LAWYERS

A lawyer who is not a member of the Virginia State Bar but is currently authorized to practice law in another state (out-of-state lawyer) may not represent practitioners in a legal capacity in proceedings before the various health regulatory Boards of the Department of Health Professions (DHP) without first complying with Rule 1A:4 of the Rules of the Supreme Court of Virginia. Effective July 1, 2007, Rule 1A:4 governs the admission of out-of-state lawyers to appear before Virginia administrative agencies and courts. Appearance *pro hac vice* in a proceeding before a regulatory board is subject to the discretion and approval of the board where such case is pending.

The Rule requires an out-of-state counsel to associate with local counsel (a lawyer who is an active member in good standing of the Virginia State Bar). The local counsel is required to file a motion to associate the out-of-state lawyer with the appropriate Board for permission to appear *pro hac vice* (i.e., “for this occasion”). The motion is to be accompanied by (1) the original, notarized application of the out-of-state lawyer, (2) a proposed order granting the motion and (3) the \$250.00 application fee made payable to the Clerk of the Supreme Court of Virginia. DHP is responsible for processing the application and for sending the application and fee along with the a copy of the order granting or denying the motion to associate to the Clerk of the Supreme Court of Virginia.

Following are general guidelines regarding representation of respondents or applicants before the various health regulatory boards. Contact the Deputy Director of Administrative Proceedings Division with specific questions. (See contact information below).

Who is responsible in DHP for ensuring compliance with the Rule?

Within DHP, the Administrative Proceedings Division (APD) is responsible for processing all applications under the new Rule. All inquiries shall be directed to the Deputy Director of APD. Any employee of DHP who becomes aware that out-of-state counsel wishes to or has become involved in a case before any Board must notify counsel of the Supreme Court Rule, direct them to contact the Deputy Director, and notify the Deputy Director in writing of the situation.

What is APD’s role in ensuring compliance with the Rule?

- Maintain application forms
- Answer inquiries from out-of-state and local counsel and agency staff
- Receive applications, motions of local counsel, fees, and requests for temporary admission
- Present requests for temporary admission to appropriate Board executive for Board consideration
- Determine if application, motion, and draft Order are complete and if there are any impediments to approval

- Present application, motion and Order to appropriate Board executive for Board consideration
- Forward application, fee, and Order to the Clerk of the VA Supreme Court
- Maintain copies of all records
- Maintain database of all applications and appearances by out-of-state counsel
- Provide information and reports to VA Supreme Court as required

What can non-Virginia lawyers do for their clients?

At an informal conference:

A non-lawyer may assist a respondent or applicant at an informal conference. However, non-lawyers may not make opening or closing arguments or cross-examine witnesses. Their participation is limited to presenting facts, figures, and factual conclusions only.

At a formal hearing:

Only lawyers licensed to practice in Virginia or admitted under Rule 1A:4 may represent respondents or applicants before the Boards at formal hearings.

Other matters:

A non-lawyer may negotiate a consent order with Board staff or APD staff.

A non-lawyer may request subpoenas.

A non-lawyer *may not* participate in oral argument regarding any pre-hearing matter on which the Board must rule (such as objections to exhibits) before the Board or any member of the Board.

A non-lawyer may request a continuance (as long as oral argument before the Board is not required).

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